

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 356 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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MER MALDE VEJA & MER MENAND MALDE

Versus

STATE OF GUJARAT

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Appearance:

MR VIVEK BAROT for the appellants  
MR. U.A. TRIVEDI, ADDL.PUBLIC PROSECUTOR for  
Respondent - State.

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE A.L.DAVE

Date of decision: 14/07/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The appellants who have been convicted for the offences under Sections 302, 324 and 323 read with Section 34 of the Indian Penal Code and sentenced to life term and a fine of Rs. 500 each, in default to undergo

further rigorous imprisonment for 2 months for the offence under Section 302 read with Section 34 of the IPC, rigorous imprisonment for 3 months and a fine of Rs. 200 each, in default to undergo further R.I for 15 days for the offence under Section 324 read with Section 34 of the Indian Penal Code and also one month rigorous imprisonment and fine of Rs. 100 each, in default to undergo further rigorous imprisonment for 7 days for the offence under Section 323 read with Section 34 of the Indian Penal Code, by judgement and order dated 24.4.1989 of the Additional Sessions Judge, Jamnagar, in Sessions Case No.39 of 1986, have challenged the said decision before us in this appeal.

In the charge which was framed against these two convicts on 16.2.1989 at Ex.6, it was alleged that on 22.11.1985 in the morning at about 5.30, the accused No.1 Malde Veja armed with a spear and the accused No.2 Menand Malde with a stick, attacked Vaghji Hirji and Mahajan Velji Samat, in furtherance of their common intention inflicted spear and stick injuries to them and intentionally caused their death and that they also in furtherance of such common intention, caused spear and stick injuries to witness Maniben Vaghji and a stick injury to witness Prabhulal Chhaganlal.

2. The prosecution story is that there were some disputes between the accused No.1 and deceased Vaghji Hirji. On 22.11.1985, Vaghji Hirji and his wife Maniben Vaghji started from their house in a bullock-cart in the morning around 5.30 for going to the bus stand. Prabhulal Chhaganlal was driving the bullock-cart. When they proceeded hardly a hundred feet ahead, the accused persons - Malde Veja armed with a spear and Menand Malde armed with a stick, chased the bullock cart and started giving blows to them with their weapons. The accused No.1 Malde Veja gave spear blows to Vaghji Hirji, while he was sitting in the cart. Vaghji Hirji had got his both legs amputated due to cancer years back and was having aluminium legs. Vaghji Hirji who was given several blows was killed on the spot and his wife Maniben was injured by spear and stick blows. When this incident was occurring, she had raised shouts. The bullock cart had proceeded some feet and stopped near a water tank, which was near the Mahajan Vadi. On hearing the shouts, Mahajan Velji Samat, who was in the Mahajan Vadi due to arrangements which were being made for the marriage reception of his son, came out and on his telling the accused persons to stop beating, the accused No.1 Malde Veja gave spear blows to him and the other accused gave a stick blow, as a result of which, Mahajan Velji Samat

fell down. His son who was also in the Mahajan Vadi and on hearing the shouts come out, had seen the incident and on finding that his father falling down due to injuries caused by the accused persons, he went near him and alongwith others, picked him up. Mahajan Velji was then taken to the Jamnagar Hospital from the said village Navagam and at Jamnagar, he passed away on the next morning. In the meantime, Veljibhai's dying declaration was recorded as per Ex.33 after his complaint, which was also treated as a dying declaration, came to be recorded as per Ex.67. According to the prosecution, the injured witness Maniben witnessed the incident and witness Rameshchandra, son of Velji had also seen the accused persons attacking Vaghji, Maniben and his father. Witness Bhavarlal who soon came there also supported their version. Prabhulal, after getting the first stick blow ran away and does not throw any light on the prosecution case, except by stating that there were two assailants and one of them had given him a stick blow and that therefore, he had run away. The dispute between the accused persons with Vaghji Hirji, started after the accused persons purchased the land which was adjoining the land of Vaghji Hirji. There was a common hedge between the two parcels of land and the accused persons were claiming a right of way over the land of Vaghji and in the past, there were cases filed over such disputes. The prosecution version is that though it was a wintry morning, there were a street lights and witness Maniben had identified these assailants, whom she already knew, from close quarters. Even witness Rameshchandra had known these persons and he could identify them. The deceased Mahajan Velji Samat in his dying declaration only expressed his suspicion against the persons of the accused No.1 having been the assailant and he did not in either of his dying declarations Ex. 33 and Ex.67 specifically name the accused persons as the assailants. He named the accused No.1 stating that his persons were the assailants and he did mention that there were disputes between Vaghji Hirji and the accused No.1 Malde Veja and further that he was attacked with spear while he went out on hearing the shouts of the lady. The prosecution case is that on the basis of the intimation sent by the Jamnagar Police after Mahajan Velji Samat was admitted in the Irvin Hospital, Police Sub-Inspector Sodha of Lalpur Police Station, which was having jurisdiction over Navagam area, made an entry Ex.74 at 7.45 A.M in the station diary at serial No.9 to the effect that information was received from the control room that a murder was committed in Navagam, of a Mahajan and that Police should proceed to Navagam and take further steps. Navagam is about 45 k.m away from Lalpur.

On reaching Navagam, PSI Sodha had seen the dead body of Vaghji Hirji lying in the bullock cart. He called the panchas and prepared the inquest panchnama, during which Nemchand, brother of Vaghji Hirji, identified the dead body and thereafter, panchnama of the scene of the offence was drawn and statements of witness Nemchand and Prabhulal were recorded. According to the prosecution, witness Maniben who had sent for her son-in-law earlier by sending Nemchand to Jamnagar, was taken to Jamnagar in a taxi. The prosecution case is that soon after the attack by the accused persons, Rameshchandra had taken his injured father Mahajan Velji in a bus which was to go to Jamnagar from Navagam and in the very bus, Nemchand travelled to give message to Maniben's son-in-law Rasiklal. The fact that Mahajan Velji Samat reached the hospital around 7.20 A.M shows that the bus had reached Jamnagar before that time. According to the prosecution, PSI Sodha thereafter proceeded to Jamnagar and there he recorded statements of Rameshchandra and others. In the meantime, Maniben who was not admitted as an indoor patient, was discharged after some treatment and she went back to Navagam and her statement came to be recorded in the evening at Navagam. The prosecution version is that, earlier, PSI Sodha had already come to know about the names of the accused persons before he left Navagam for Lalpur. In fact, the accused persons had already surrendered themselves at Lalpur Police Station by 3.45 P.M. The prosecution case further is that the accused No.1 had filed a non-cognizable offence complaint against Mahajan Velji Samat and in that connection he was, under a Police yadi, sent to the hospital. According to that complaint, the accused No.1 had received the injuries at the hands of Velji Samat. The yadi Ex.23 dated 22.11.1985 sent by PSI Lalpur to the Lalpur Primary Health Centre reflects that the accused No.1 Malde Veja, who had filed N.C No.56/85 for the offence under Section 323 of the Indian Penal Code against Mahajan Velji Samat for giving stick blow to him and causing injury was being sent for treatment. The medical certificate in that connection which is at Ex.25 shows that the accused No.1 - Malde Veja was examined by the doctor on 22.11.1985 at 6.15 P.M and a bruise 4cm x 2cm in size with redness on left leg on the calf region posterior aspect was found. The prosecution case therefore is that, the presence of these accused persons is not only established from the evidence of the eye witnesses, but even from the complaint made by the accused No.1 that he was injured by Mahajan Velji Samat, who later on succumbed to the injuries caused to him by the accused persons, after having been taken to Jamnagar in the early morning on 22.11.1985. The prosecution case is that all the spear

injuries were caused by accused No.1 and the accused No.2 had caused stick injuries. These accused persons had, at the early morning, come together and after attacking Vaghji Hirji, Maniben Hirji and Mahajan Velji Samat with lethal weapons, run away together from the scene of the offence. According to the prosecution, the fact that they had come together armed with lethal weapons early in the morning at 5.30, chased the bullock cart and caused the fatal injuries resulting in death of two persons, clearly showed that they were acting in furtherance of common intention of causing murder. According to the prosecution, these accused persons who are father and son were residing at the outskirts of Pipli village and their presence at Navagam near the house of the deceased in the early morning with weapons and their attacking the two deceased persons and Maniben, amply showed that accused had participated in the crime with a prior meeting of mind to commit the offence and had acted in a concerted manner.

3. The defence version is of total denial and the accused have even denied having known Maniben and Rameshchandra. According to them, they were picked up from their place and taken to Lalpur Police Station and beaten up and then sent to the hospital.

4. The learned Counsel appearing for the appellants has contended that the initial suspicion against the two accused persons had flowered into giving of their names as the assailants. It was submitted that though PSI Sodha had reached Navagam after making the entry at 7.45 A.M at Lalpur Police Station, he did not proceed to record the first information report of Maniben who is said to have witnessed the incident. It was submitted that if Maniben had really known the names of the accused persons as the assailants, PSI Sodha would have first recorded her statement as it was his duty to register the offence at that earliest point of time. It was submitted that the PSI could not have presumed that the Jamnagar Police would have registered the offence, and, by not making any attempt to record the F.I.R., after reaching Navagam, the PSI failed in his primary duty as an investigating officer. It was further submitted that the delay in recording the statements of Maniben and others was deliberate on his part because the names of the assailants were not forthcoming and there was only a suspicion against these two persons. It was further argued that Nemchand, brother of the deceased Vaghji Hirji, was not an eye-witness. Though he had identified the dead-body of his brother during the inquest panchnama prepared at Navagam by PSI Sodha, he did not disclose the

names of the assailants in that inquest panchnama. It was contended that under Section 174 of the Code of Criminal Procedure, 1973, the Police Officer, after proceeding to the place where the body of the deceased person is, has to make an investigation in the presence of two or more respectable inhabitants of the neighbourhood and draw up a report of the apparent cause of death describing such wounds, fractures, bruises and other marks of injury as may be found on the body and stating in what manner or by what weapon or instrument, if any, such marks appeared to have been inflicted. It was submitted that the words "shall make an investigation and draw up a report of the apparent cause of death", occurring in Section 174 enjoined a duty upon the PSI to take down the names of the assailants in the inquest panchnama by enquiring as to who had caused the death. The fact that this was not done and the inquest panchnama was silent as to the names of the assailants showed that the names of the assailants were not known at that point of time. Reliance was placed by the learned Counsel on the decision of the Hon'ble the Supreme Court in the case of Balaka Singh and ors. Vs. State of Punjab, reported in AIR 1975 S.C 1962, in support of his contentions. It was submitted that if Nemchand had known the names of the assailants, he would have disclosed them during the inquest panchnama and since that was not done, it should be assumed that he did not know the names and that his assertion before the Court that the names were disclosed to him by his sister-in-law Maniben was false. It was also submitted that Maniben was silent on the question as to whether she had given the names of the assailants to Nemchand. It was further argued that according to Maniben, she was questioned by the PSI in the morning and she had denied the suggestion that the names of the assailants were not disclosed to the PSI, when questioned. On this basis, it was contended that if really PSI Sodhi had come to know about the names of the assailants when he had questioned Maniben, he would have first recorded her complaint or in any event her statement. The fact that recording of her statement was deferred till evening, shows that Maniben did not disclose the names of the assailants and the matter was truly in the realm of suspicion in the early part of the day. The learned Counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of Shankarlal Gyarasilal Dixit Vs. State of Maharashtra, reported in AIR 1981 S.C 765, in support of his submissions, more particularly to the following observations appearing in paragraph 33 of it's judgement:-

"Different motives operate on the minds of

different persons in the making of unfounded accusations. Besides, human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions."

In that case, these observations were made in the background of the fact that a dead body of a tender girl, raped and throttled, was found in the appellant's house, and, instinctively, everyone drew the inference that the appellant must have committed the crime. The Hon'ble the Supreme Court observed that no one would pause to consider why the appellant would throw the dead body in his own house, why would he continue to sleep a few feet away from it and whether his house was not easily accessible to all and sundry. It was observed that no one would even care to consider why the appellant's name was not mentioned to the Police until quite late and these were the questions for the Court to consider. That decision was rendered in a case of circumstantial evidence and it was observed that in such cases, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. The learned Counsel for the appellant also argued that there were two sets of evidence led by the prosecution, one showing that there was sufficient light so that the eye witnesses could have recognized the assailants and the other consisting of hostile witness Prabhudas's evidence showing that there was darkness. It was submitted that when there are two different sets of evidence, one which helps the accused should be accepted. The Counsel contended that the probability of there being darkness cannot be ruled out and therefore, the assertions of the two eye-witnesses about their having seen the the incident should not be accepted. It was also contended that the dying declarations Ex. 33 and 67 of Mahajan Velji Samat showed that Velji Samat had only a suspicion that the persons belonging to the accused No.1 had assaulted Vaghji Hirji and him. It was also contended that in the dying declaration Ex.33 there was a reference to spear blow being given also by another person. It was argued that it appeared from the dying declaration Ex.33 that two persons were armed with spears. On this basis, it was contended that when the assailants were not identified in these dying declarations and that Velji Samat was under the impression that another person had also inflicted spear injury, the probability of there being darkness becomes acute, the benefit of which must go to the accused persons. It was also argued that when admittedly Rameshchandra and Nemchand had travelled together in a bus from Navagam to Jamnagar in which Mahajan Velji Samat

was being taken to Jamnagar, it would have given them ample scope to speak out the names of the assailants. The fact that in the dying declarations Ex. 33 and 67 the names did not specifically appear, shows that these two persons in fact did not know the names of the assailants, argued the learned Counsel. It was contended that the gradual development indicates that at the beginning it was only a suspicion, but at a later point of time, the story was spun by the witnesses. It was finally contended that the order regarding payment of compensation was not warranted.

5. The learned Assistant Public Prosecutor supported the judgement of the trial Court on all counts. He contended that the evidence of Maniben and Rameshchandra clearly established the identity of both the accused persons and the part played by them. He submitted that medical evidence clearly proved the number of injuries caused by spear blows inflicted by the accused No.1 on both the deceased persons. The injuries on Maniben by spear and stick blows were also established. It was submitted that the evidence satisfactorily established that there were only two assailants. Even in the dying declaration Ex. 33, there was no indication that there was any third person involved. It was submitted that in the dying declaration Ex.67, there was no reference to the second person giving a spear blow. There was a clear reference to one person giving a spear blow and the other person giving a blow, which fell him down. The learned Counsel contended that when Velji Samat had received four spear blows cavity deep and he did not profess to know the accused persons. He however had thrown sufficient light on the prosecution case to give credence to the version of the eye witnesses and had referred to the shouts being heard by him of the lady, pursuant to which he went out of the Mahajan Vadi asking the accused persons to stop further assault. He also referred to the previous disputes between the accused No.1 and Vaghji Hirji and to the fact that two persons had assaulted Vaghji Hirji, Maniben and him. The learned Additional Public Prosecutor also submitted that it was not necessary to record the names of the assailants in the inquest panchnama, because the preparation of inquest report was not to be done for the purpose of recording the details as to who committed the assault and in what manner it was committed. It was submitted that the purpose of preparing inquest panchnama was only to record the facts relating to the dead body of which the inquest is done.

6. The prosecution witness Maniben who has deposed



at Ex.35 has stated that on the day of the incident, they had started from their house in a bullock cart for going to the bus stand because they wanted to go to Jamnagar for making purchases for the marriage of their daughter Kailash. She and her husband, whose both legs were amputated in the past and was having aluminium legs, had started together. The bullock cart was being driven by Prabhulal, who was on the previous evening asked through Nemchand to bring the bullock cart. Nemchand is the younger brother of her deceased husband Vaghji Hirji. When they proceeded about 100 ft. from their house, the accused No.1 - Malde Veja and accused No.2 - Menand Malde appeared there and started chasing the bullock cart. She has stated that accused No.1 Malde Veja was having a spear while the accused No.2 - Menand Malde was having a stick. The accused No.1 Malde Veja gave a spear blow to her husband. The accused No.2 Menand Malde had given a stick blow. They had started shouting and the bullock cart had proceeded ahead and halted near the water tank. Her husband was given more blows and he fell down in the bullock cart itself. She has stated that injuries were caused to her husband on his head, chest and neck. She was also given spear and stick blows on her hand, leg and on her left side. She has stated that Prabhulal who had received a stick blow became frightened and had run away. On hearing her shouts, Veljibhai came out of the Mahajan Vadi. In that Mahajan Vadi, preparations were being done for the luncheon arrangement for his son's marriage. When Veljibhai came out, he told the accused persons to stop assault. Thereupon, Veljibhai was inflicted spear and stick blows by these accused persons. Veljibhai fell down because of such blows. After the incident, Nemchand and others had come there and Nemchand asked her as to what had happened and she told him that his brother was killed. At the time a bus was going to Jamnagar and Nemchand had gone in that bus and sent taxi from Jamnagar, in which her son-in-law Rasik had come to take her to Jamnagar. She had gone in that taxi to Jamnagar and was taken to Irvin Hospital, where she was treated, and by the evening, she had returned home. She has then stated that the accused persons who were also identified by her in the Court, were having land adjoining her husband's land with a common fencing. She states that these accused persons were claiming a right to pass through the land of her husband and had in the past beaten their 'sathi', which incident had resulted in cases being filed. In her detailed and searching cross-examination, she has fully maintained her version. She has stated that initially Prabhulal was given a stick blow and after the bullock cart was driven fast by him for about 50 - 60 ft., he had run away. She has stated

that she and her husband had raised shouts. She has also stated that they had started in the bullock cart at 5 'O Clock in the morning and that she had first seen the accused persons when they were ten feet away from her. She has stated that her husband was given about seven or eight spear blows and seven or eight stick blows. She has also stated that when Veljibhai came out of the Mahajan Vadi and was 8 to 10 feet away from Mahajan Vadi, the accused persons had attacked him. She has stated that Veljibhai was inflicted 4 to 5 spear blows. She has stated that she had received three spear blows on her leg, knee and left hand and 5 to 6 stick blows. She has denied the suggestion that at the time of the incident, it was dark and has categorically stated that the lights on the street were on at the time. She has denied the suggestion that she did not recognise the assailants because of darkness and asserted that the lights were on. The fact that there was an electric pole near about the place of incident is amply borne out from the map Ex.30, which is proved by the Mamlatdar Gunvantrai Narmadashankar, who has stated in his deposition Ex.28 that the electric pole mark "C" in the map was 23.8 ft. away from the bullock cart. He has also stated that the distance between Mahajan Vadi and the bullock cart was about 25 ft.

We have strictly gone through by the map Ex.30 which was already filed in the trial. It appears that earlier when the matter was called out before another Bench, an attempt was made to get another map prepared before the High Court but that is not a part of the record and none of the parties have referred to it and it has not been taken by way of any additional evidence in the present appeal and we have not taken it into account since it was not a part of the evidence and it was prepared only to assist the previous Bench, when the matter was called out before it and was later on ordered not to be treated as part heard.

The evidence of the injured eye witness Maniben clearly establishes that she had known these accused persons, which was but natural since they were owning adjoining lands and there were disputes between them and her husband. She had seen the assailants from a very close distance when they had started inflicting blows. She had clearly seen accused No.1 Malde Veja giving spear blows and his son accused No.2 Menand Malde giving stick blows to them. When she shouted, Velji Samat came out of the Mahajan Vadi. The accused persons had attacked Velji who also received spear blows and as a result thereof fallen down. The panchnama of the scene of the offence

at Ex.41 records that blood was found on the ground near the bullock cart and also at a spot which was 18 ft. away from there, which obviously was the place where Velji Samat had fallen down having received spear blows in the vital parts of the body. On going through her deposition, we are satisfied that Maniben's evidence inspires confidence and supports the prosecution version on all material particulars.

7. The prosecution witness Rameshchandra who has deposed at Ex.37 has stated that his younger brother Kishore was to get married and on the next day of the incident, guests were to arrive and therefore, meals were to be prepared and this is why they were in the Mahajan Vadi in the previous night and in the early morning, they had woken up at about 5'0 Clock and at that time shouts of some lady were heard, as a result of which his father went out and when he had gone about 15 to 20 ft. in the open, he had also followed his father and at that time, he had seen that these two accused persons whom he had identified, were giving blows with spear and with stick to Vaghji Hirji and Maniben and when his father told them to stop, they immediately attacked his father. The accused No.1 Malde Veja had caused spear injuries to his father, the accused No.2 - Menand Malde had given stick blows to his father and his father had fallen down. More blows were given and when he started bleeding profusely, both these persons ran away. His father received injuries on his abdomen on both the sides. He tried to lift him and at that time Bhavarlal Pujari also came from Mahajan Vadi and they had lifted Velji and placed him on an otta of the Mahajan Vadi. Thereafter, they had gone in a bus taking Velji Samat around 6'0 Clock in the morning to Jamnagar. In Jamnagar, he was operated, but he passed away at about 9'0 Clock on the next morning. This witness has also stated that there were some previous disputes between Vaghji Hirji and the accused persons and that is why Vaghji Hirji was attacked. This witness has not been shaken despite a searching cross-examination. He has stated that though Maniben belongs to their community, she was not related to him.

8. These two eye-witnesses clearly establish the guilt of the accused. Their evidence is fully supported by the medical evidence, which shows the innumerable spear blows, which were given to the deceased persons on their vital parts by the accused No.1. Their positive evidence that these two accused persons - accused No.1 being armed with spear and accused No.2 being armed with stick cannot be brushed aside by reference to the dying declaration Ex.33 of Velji Samat, where he has stated

that after one person gave him a spear blow another person had also given him a spear blow. Velji Samat never professed to have identified the accused persons. If the prosecution wanted falsely to implicate these two accused persons, there was no easier way than of incorporating their names in these two dying declarations. In the dying declaration Ex.67, it was stated by Velji Samat that initially he was given a spear blow by one person and other person thereafter gave a blow to him as a result of which he fell down. As noted above in view of the positive evidence of these eye-witnesses, there is no scope of any third person being present with a spear at the time of the incident. The state of mind of Velji Samat who had received four spear injuries inflicted on him in his abdomen, particularly when he did not profess to have identified these two accused persons, was such that reference to another person giving him a spear blow is an obvious mistake in the dying declaration Ex.33, which was not there in the earlier dying declaration Ex.67. The fact that Velji Samat spoke of a stick blow having been given by him to the person who had given him spear blow and his narration in the dying declaration that the stick had hit on the head of that person obviously was on his own impression at the time he was giving the dying declaration. We have to weigh this against the positive evidence which shows from the Police yadi Ex.23 and the medical certificate at Ex.25 that the accused No.1 Malde Veja had filed an NC complaint against Velji Samat for an offence under Section 323 of the IPC in respect of the stick blow given to him by Velji Samat. This important fact, gives credence to the prosecution version that the accused No.1 had given spear blows to Velji Samat, in the morning of 22.11.1985.

9. Nemchand does not profess to be an eye-witness.

In his deposition Ex.83, he has stated that after his brother and sister-in-law had left the house in the morning on 22.11.1985 within 10 minutes, he had received a message that his brother was attacked near Mahajan Vadi and he had proceeded there and seen that his brother was lying dead in the bullock cart with injuries on his body and that his sister-in-law Maniben was also there with injuries. On being asked, she told him that the accused No.1 - Malde Veja and the accused No.2 Menand Malde had assaulted them with spear and stick and run away. This witness being the brother of the deceased Vaghji Hirji, would have naturally asked his sister-in-law, who was also injured, as to who had committed the assault on them. He cannot be disbelieved simply because Maniben in her deposition had stated that she had informed him that

his brother was killed. Maniben did not, at any point of time, state that she had not given the names of the assailants to Nemchand. The learned Counsel would like us to draw an inference against the prosecution from the fact that the names of the assailants were not disclosed in the inquest panchnama by Nemchand. That is an erroneous argument. In our opinion, the proceedings under Section 174 of the Code have a very limited scope. The object of the proceedings thereunder is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so, what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted, is foreign to the ambit of scope of the proceedings under Section 174. Neither in practice nor in law was it necessary for the Police to mention these details in the inquest report, as held by the Hon'ble Supreme Court in Podda Narayana Vs. State of Andhra Pradesh, reported in 1975 S.C 1252. In Khujji Vs. State of Madhya Pradesh, reported in 1991 S.C 1853, while considering the question whether non-mention of the names of the eye-witnesses in the inquest report was fatal, the Hon'ble Supreme Court referring to the ratio of the decision in Podda Narayana's case (supra) reiterated the same. Again in Mahendra Rai Vs. Mithilesh Rai (1997) 10 S.C.C 605, the Hon'ble Supreme Court while considering the provisions of Section 174 of the Code, has held that a perusal of the Section would go to show that it does not require anywhere to mention the names of the assailants. It was held that it is neither incumbent upon the Police Officer who prepared the inquest report to mention the names of the assailants, nor was it necessary for the eye-witnesses who are witnesses to the said inquest to insist upon the mention of the names of the assailants in the inquest report. In view of this settled legal position, it is not possible to draw any inference against the prosecution that the names of the assailants were not known merely because they are not mentioned in the inquest report during which Nemchand, brother of deceased Vaghji had identified his dead body.

10. PSI Sodha in his deposition has in fact stated that before he started from Lalpur to Navagam, he had known the names of the assailants. The information regarding the offence was received by him at Lalpur in the morning at 7.45 and having made the entry Ex.74 in the station diary, he had proceeded to Navagam. Therefore, the investigation had already started and there was no question of his recording any first information report at Navagam. The investigation starts

when the Police officer proceeds to the place of the incident pursuant to the information about the cognizable offence having been committed. Therefore, the argument canvassed by the learned Counsel that there was delay in recording the first information report at Navagam, is wholly erroneous. The fact that the Investigating Officer recorded the inquest panchnama first and thereafter the panchnama of the scene of the offence and then the statements of Nemchand and Prabhulal cannot work against the prosecution. In fact, he adopted the correct chronology of first recording the inquest report wherein the particulars of dead body were noted and further proceeding with the investigation by recording the panchnama of the scene of offence followed by statements of the persons, who were available at that time. It is clear that at that time Maniben had gone for treatment to Jamnagar in a taxi and therefore, her statement came to be recorded later when she returned from Jamnagar. Even assuming that the Police Officer may have casually questioned her in the morning and since she was to go to Jamnagar, her statement was not recorded at that point of time because he had to draw the inquest panchnama first, no adverse inference can be drawn against the prosecution from the fact that her statement came to be recorded in the evening. This in our opinion, is not a case where suspicion had developed into a story spun by the witnesses. It is on the contrary a case where two eye witnesses who had known the assailants have reliably deposed as to the role these accused had played in committing the crime. Their evidence leaves no doubt as to the part played by these accused persons in causing fatal injuries to Vaghji and Velji and injuries to Maniben by lethal weapons. There were past disputes between the accused No.1 and deceased Vaghji Hirji providing sufficient motive for the crime to them. The positive evidence of eye witnesses cannot be brushed aside by imagining as to what talk had taken place between Nemchand and Rameshchandra when they were travelling together to Jamnagar in a bus. It was not their job to tutor the injured Velji Samat while he was being carried in a bus. Moreover, Nemchand had no reason to believe that Velji Samat did not know the names of the assailant and that he should tutor him while he was undergoing the agony of four spear blows inflicted cavity deep in his abdomen, nor was it an occasion for Rameshchandra to coach his father as regards the names of the assailants. The fact that the names of the assailants did not appear in the dying declarations and only suspicion was expressed by the deceased on the contrary shows that there has not been any attempt to involve anyone in those dying declarations. However,

from the fact that deceased Velji Samat had not specifically referred to these persons in his dying declaration, one cannot jump to the conclusion that the witnesses - Nemchand and Rameshchandra were not speaking the truth or that the names were not earlier known. That negative approach is not at all warranted either by law or from the manner in which these two witnesses had deposed.

11. As noted above, Maniben's evidence and the panchnama of the scene of offence Ex.30 as also evidence of Mamlatdar Ex.28 shows that there was an electric pole near about the scene of offence and the lights were on at the time of the incident. The defence has rightly not dared to suggest Rameshchandra that there were no lights. Rameshchandra has also stated that he had seen the incident and we have no reason to disbelieve the positive version of these eye witnesses. This is therefore, not a case where there are two different sets of evidence one showing sufficient light and other dark, but it is a case positively establishing that there was sufficient light and that the accused who were already known to the eye-witnesses were identified when they were assaulting the two deceased persons and Maniben.

12. In this view of the matter, we are in complete agreement with the reasoning adopted by the trial Court for reaching its findings and hold that the trial Court was fully justified in convicting and sentencing the accused persons for the offences with which they were charged.

13. There is however, a direction by the trial Court that both the accused persons should pay Rs. 15,000/each to the heirs of Vaghji Hirji and Mahajan Velji Samat, jointly by way of compensation. We take note of the fact that the amount is straightaway awarded as compensation and it is not as if a fine is imposed of that amount with a direction that it should be paid by way of compensation. Under Section 357 of the Code of Criminal Procedure, an order to pay compensation can be made when a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part and while passing judgement, the Court can order the whole or any part of the fine recovered, inter-alia to be applied in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court. In sub-section (3) of Section 357, it is provided that when a Court imposes a sentence, of which fine does not form a part, the Court

may, when passing judgement, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced. In the present case, the fine imposed on each of the accused is of Rs.500 for the offence under Section 302 read with Section 34 of the IPC, Rs. 200 for the offence under Section 324 read with Section 34 of the IPC and Rs. 100 for the offence under Section 323 read with Section 34 of the IPC, over and above the substantive sentences of life imprisonment. It is not as if the amount which is ordered to be paid by way of compensation is out of any fine imposed. Therefore, the direction of the trial Court on the accused persons that over and above undergoing the sentence of life imprisonment and paying fine as ordered, they should also pay compensation, does not appear to be justified by the provisions of Section 357 of the Code. We therefore, while confirming the conviction and sentence imposed by the trial Court on all counts on both the accused, set aside the direction regarding payment of compensation. Subject to this modification, the judgement and order of the trial Court is confirmed and the appeal is dismissed.

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\*/Mohandas